

STAMP & RETURN

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re: }
 }
Templo De Dios, Inc. 4 } BNPL-20131104AAY
 } Facility Id: 194791
 }
Application for a New LPFM }
Station at Fort Worth, Texas }

ACCEPTED/FILED

DEC 11 2013

Federal Communications Commission
Office of the Secretary

TO: Office of Secretary
Attn: Chief, Audio Division

PETITION FOR EXPEDITED RECONSIDERATION AND
REINSTATEMENT *NUNC PRO TUNC*

Templo De Dios, Inc. 4 (“Templo”), pursuant to Section 1.106 of the Commission’s Rules, hereby requests that the Commission reconsider its dismissal of the above-referenced application (the “Application”).¹ As demonstrated below, the dismissal of the Application based on the purported short-spacing to a full power FM allotment was in error. Instead, the Application submitted during the LPFM Filing Window correctly prepared a spacing study pursuant to the standards set forth in Section 73.807 and the FCC’s public notice regarding the submission of LPFM applications as of the commencement of the LPFM filing window.² Therefore, Templo respectfully requests that the above-referenced application be reinstated *nunc pro tunc*.³

¹ This petition is timely filed within 30 days of the date of public notice. See Public Notice Report No. 48132.

² *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 - October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854 (rel. June 17, 2013)(“June PN”).

³ *See Statement of Future Policy on Incomplete and Patently Defective Construction Permit Applications*, Public Notice, 49 Fed. Reg. 47,331 (1984). *See also James River Broadcasting Corp. v. FCC*, 399 F.2d 581 (D.C. Cir. 1968).

According to the Dismissal Letter, the Application was dismissed due to a purported Section 73.807 violation with respect to a vacant allotment for Channel 281C3 at Sanger, Texas. The Dismissal Letter stated that the required spacing to the vacant allotment is to be 78 km, and the Application specifies a facility that is located only 71.8 km from the vacant allotment.

However, as of the opening of the LPFM Window on October 17, 2013, the vacant allotment cited in the Dismissal Letter did not exist. Instead, Channel 281C3 was assigned to Station KTDK(FM), Sanger, Texas. As shown in Exhibit A, the distance between the proposed tower site specified in Templo's Application, and the licensed site for KTDK(FM), Sanger, Texas was 82.69 kilometers. Since that distance is more than what is required in Section 73.807 of the FCC's rules, Templo's proposed facility fully complied with Section 73.807 regarding Station KTDK(FM), Sanger, Texas as of the opening date of the LPFM filing window.

The FCC's confusion apparently arises from the fact that, subsequent to the opening of the LPFM filing window, the licensee for Station KTDK(FM) turned in the authorization. According to a review of the FM engineering database, the entry for Station KTDK(FM) was changed on October 21, 2013 (seven days after the LPFM filing window opened). However, not only was the entry changed from "Use" to "Vacant", the coordinates for Channel 281C3 were changed. Apparently, when the FCC ran its study of the Application after the close of the LPFM window, it used the vacant allotment for Channel 281C3, rather than the licensed coordinates for Station KTDK(FM) that were in existence as of the opening of the LPFM filing window. The result was the Application's purported short-spacing to the vacant allotment of 71.8 kilometers instead of the required 78 kilometers.

Under the FCC's rules and procedures for filing windows, the FCC is required to take a snapshot of the existing FM engineering database as of the opening day of the LPFM Filing Window. Otherwise, parties filing on different dates within a filing window would be confronted with an ever-shifting engineering landscape. In fact, the *June PN* stated that LPFM applications only needed to protect existing facilities and pending applications "that were filed prior to the date of this Notice", i.e., June 17, 2013.⁴

Certainly, Channel 281C3 was assigned to Station KTDK(FM) on June 17, 2013, at site which was more than 78 kilometers from the tower site specified by Templo in the Application. Moreover, Station KTDK(FM) continued to be licensed on Channel 281C3 on October 17, 2013, when the LPFM filing window opened after the government shutdown.

As such, the Application was erroneously dismissed, and must be expeditiously reinstated. Making this matter more important is the fact that, on December 3, 2013, the FCC released a public notice indicating that the FCC will be issuing further public notices later in December regarding possible mutually-exclusive applications.⁵ Templo is concerned that the erroneous dismissal of the Application may lead to the FCC excluding the Application from consideration, and from future FCC releases.

Even if the FCC ignores its obligation to take a snapshot of the database as of the opening of the LPFM filing window, the public interest would benefit from the grant of the instant request. Since Channel 281C3 is now vacant, it will need to be included in a future FM auction. Once it is auctioned, the winning bidder will need to specify a tower site, and

⁴ *June PN*, pg. 1.

⁵ *See Media Bureau Provides Further Guidance on the Processing of Form 318 Applications filed in the LPFM Window*, Public Notice, DA 13-2308, pg. 4 (rel. Dec. 3, 2013)(*"December PN"*).

construct the facility. Thus, it is entirely possible that the winning bidder will specify a site for Channel 281C3 that is fully-spaced.

However, even if the new licensee does not do so, Templo would be entitled to find a replacement channel pursuant to Section 73.875 to modify its facilities to avoid causing interference to the new FM station on Channel 281C3. Thus, by granting the instant request, the FCC would be authorizing two FM facilities, rather than just one. The public would certainly benefit from the creation of two new local voices, rather than just one voice with a large, unnecessarily underserved area.

Accordingly, since the Application correctly studied the facilities in existence as of the commencement of the LPFM filing window, Tempo De Dios, Inc. 4 respectfully requests the expeditious reconsideration of the Commission's action dismissing the above referenced application and requests the Application's reinstatement and acceptance *nunc pro tunc*.

Respectfully submitted,

By: 

Lee G. Petro, Esquire
DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

December 11, 2013

EXHIBIT A

Fort Worth, TX LPFM in Relation to KTDK License and Ch. 281C3 Vacant Allotment



CERTIFICATE OF SERVICE

I, Lee G. Petro, hereby certify that on this 11th day of December, 2013, I caused a copy of the foregoing "**Petition for Reconsideration**" to be served by email upon the following:

James D. Bradshaw, Deputy Chief
Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 2-A234
Washington, D.C. 20554
James.Bradshaw@fcc.gov



Lee G. Petro